

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA  
and the STATE OF WISCONSIN

Plaintiffs,

v.

P. H. GLATFELTER COMPANY  
and  
WTM I COMPANY  
(f/k/a Wisconsin Tissue Mills Inc.),

Defendants.

CIVIL ACTION NO. 03-C-0949

The Honorable Lynn Adelman

**AGREED SUPPLEMENT TO CONSENT DECREE**

The Plaintiffs and Defendants in this action have entered into this Agreed Supplement to Consent Decree (the “Agreed Supplement”) in order to memorialize an agreement reached in accordance with Subparagraph 98.d of the existing Consent Decree. As explained below, this Agreed Supplement sets forth the Defendants’ agreement to commit additional funds for performance of their obligations under the Consent Decree, as envisioned by Decree Subparagraph 98.d. The United States is filing this Agreed Supplement with the Court to make it part of the public record concerning the Consent Decree, but the Court need not take any action on this filing.

1. The Plaintiffs filed this action on October 1, 2003, alleging that the Defendants are among the parties liable for environmental contamination at the Lower Fox River and Green Bay Site (the “Site”) pursuant to the Comprehensive Environmental Response, Compensation,

and Liability Act, 42 U.S.C. §§ 9601-9675. At the same time, the United States lodged with the Court a proposed Consent Decree between the Plaintiffs and Defendants. After a public comment period, the Court approved and entered the Consent Decree in a Decision and Order dated April 12, 2004.

2. The Consent Decree requires the Defendants to perform sediment remediation work at the portion of the Site that has been designated as Operable Unit 1 (“OU1”). The Defendants began remedial work, including removing sediment from OU1, in 2004, and the active remediation phase of that response work has not yet been completed. The work is being overseen by the U.S. Environmental Protection Agency (“EPA”) and the Wisconsin Department of Natural Resources (“WDNR”).

3. The Defendants are paying for the response work that they are performing in OU1 using funds deposited in a dedicated escrow account established under the Consent Decree (the “Escrow Account”). If EPA, in consultation with WDNR, determines at any time that the funds remaining in that Escrow Account are not sufficient to finance the completion of the response work, EPA has certain rights that can lead to termination of the Consent Decree. As an alternative to that course of action, Consent Decree Subparagraph 98.d affords the Defendants an opportunity to “deposit additional funds in the Escrow Account, in order to avoid an Insufficiency Determination.”

4. The Plaintiffs recently notified the Defendants that EPA was considering making a formal finding that the fund balance remaining in Escrow Account was likely to be insufficient to fund the completion of the response work. The parties have agreed to address that potential shortfall in the Escrow Account as set forth in the following Paragraph.

5. In accordance with Consent Decree Subparagraph 98.d, the parties hereby agree that the Defendants shall deposit additional funds in the Escrow Account established under the Consent Decree, as follows:

a. Defendant WTM I Company ("WTM I") shall deposit an additional \$6 million in the Escrow Account. That total amount shall be paid in three equal installments: (i) \$2 million shall be payable on or before April 10, 2007; (ii) an additional \$2 million shall be payable on or before July 10, 2007; and (iii) the final \$2 million shall be payable on or before January 10, 2008. All three payments shall be deposited in a separate sub-account within the Escrow Account (the "WTM I Sub-account"), so that those funds can be distinguished from the other funds in the Escrow Account (the "Existing Funds").

b. By no later than April 10, 2007, Defendant P.H. Glatfelter Company ("Glatfelter") shall obtain a \$6 million irrevocable letter of credit payable to the Escrow Account. The irrevocable letter of credit shall be issued by a financial institution that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by an agency of the United States Government. The financial institution shall have surplus and reserves in excess of \$500 million. The irrevocable letter of credit shall identify EPA as the beneficiary and the full \$6 million shall immediately be payable to the Escrow Account: (i) at any time before April 10, 2008, upon EPA's written certification that the Existing Funds balance in the Escrow Account is below \$2 million (by a letter in the form attached hereto as Exhibit A); or (ii) on April 10, 2008, if payment has not already been made by that date. The payment under the irrevocable letter of credit shall be deposited in a separate sub-account within the Escrow Account (the

"Glatfelter Sub-account"), so that those funds can be distinguished from the Existing Funds. At least five business days before finalizing the letter of credit, Glatfelter shall afford the Plaintiffs and WTM I an opportunity to review the proposed letter of credit to assess whether it conforms to the requirements of this Subparagraph. Notwithstanding the requirement that the letter of credit be irrevocable, at any time prior to payment under the irrevocable letter of credit, Glatfelter may deposit \$6 million into the Glatfelter Sub-account," at which time, Glatfelter may cancel the letter of credit.

c. The Defendants shall direct the Escrow Account manager as follows: All Existing Funds shall be exhausted before disbursement of any amounts from the separate sub-accounts established and funded under the preceding Subparagraphs of this Agreed Supplement. After the Existing Funds are exhausted, the WTM I and Glatfelter Sub-accounts shall each be drawn upon in equal amounts, on a 50/50 basis, to pay for response work.

d. The parties hereby agree that the additional funds to be paid into the Escrow Account under the preceding Subparagraphs of this Agreed Supplement fall within the definition of the "OU1 Response Activities and Costs" specified by Consent Decree Subparagraph 83.b.

6. Pursuant to Consent Decree Section XXX (Retention of Jurisdiction), the Court has jurisdiction to enforce compliance with the terms of this Agreed Supplement because the Court retained jurisdiction over both the subject matter of the Consent Decree and the Settling Defendants for the duration of the performance of the terms and provisions of the Consent Decree for the purpose of enabling any of the parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or

modification of the Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Consent Decree Section XX (Dispute Resolution).

**IT IS SO STIPULATED AND AGREED.**

**FOR THE UNITED STATES OF AMERICA**

MATTHEW J. McKEOWN  
Acting Assistant Attorney General  
Environment and Natural Resources Division

3/28/07  
Date

  
RANDALL M. STONE


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United States Attorney


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Milwaukee, WI 53202

3-28-07  
Date

  
RICHARD MURAWSKI  
Associate Regional Counsel  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

3/26/07  
Date

**FOR THE STATE OF WISCONSIN**

  
\_\_\_\_\_  
BRUCE BAKER  
Deputy Administrator, Division of Water  
Wisconsin Department of Natural Resources  
101 South Webster Street  
Madison, WI 53703

3/27/07  
Date

  
\_\_\_\_\_  
JERRY L. HANCOCK  
Assistant Attorney General  
Wisconsin Department of Justice  
17 West Main Street  
Madison, WI 53702

**FOR P. H. GLATFELTER COMPANY**

3/28/07

Date

Signature:

Name (print):

Title:

Address:



Jeffrey J. Norton

Vice President, General Counsel and Secretary

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature Page for Agreed Supplement to Consent Decree in *United States and the State of Wisconsin v. P.H. Glatfelter Company and WTM I Company*, Case No. 03-C-0949 (E.D. Wis.)

**FOR WTM I COMPANY**

March 27, 2007  
Date

Signature:

Name (print):

Title:

Address:

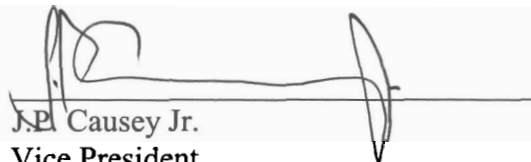
J.P. Causey Jr.

Vice President

WTM I Company

Box 2350

Richmond, VA 23218-2350

A handwritten signature in dark ink, appearing to read 'J.P. Causey Jr.', is written over a horizontal line. The signature is stylized with a large, looped initial 'J' and a long, sweeping horizontal stroke.

**Exhibit A to Agreed Supplement to Consent Decree  
(Prescribed Form of Letter Directing Payment Under Letter of Credit Before April 10, 2008)**

[Date]

[Name and Address of Letter of Credit Issuer]

Payment Directive Under Letter of Credit No. \_\_\_\_\_

Sir or Madam:

I am writing in my capacity as the authorized representative of the U.S. Environmental Protection Agency ("EPA"), the designated beneficiary under the above-referenced letter of credit. The letter of credit was established pursuant to an "Agreed Supplement to Consent Decree" in the case captioned United States and the State of Wisconsin v. P.H. Glatfelter Co. and WTM I Co., Case No. 03-C-949 (E.D. Wis.), and Subparagraph 5.b of that Agreed Supplement to Consent Decree specified certain conditions for requesting payment under the letter of credit before April 10, 2008.

EPA hereby certifies that the conditions for payment under Subparagraph 5.b of the Agreed Supplement to Consent Decree have been satisfied, and EPA therefore directs your institution to pay the full amount due under the letter of credit (\$6,000,000.00), as specified herein. Payment should be made by wire transfer in accordance with the following payment instructions:

Payment Amount:     \$6,000,000.00

Payee:                      Fox River OU1 Escrow Account  
                                    c/o Deutsche Bank Trust Company Americas  
                                    Account No. 252080

[insert wire transfer instructions]

\_\_\_\_\_  
Superfund Division Director  
U.S. Environmental Protection Agency, Region 5

### **CERTIFICATE OF SERVICE**

Pursuant to Paragraph 124 of the Consent Decree in this action, I hereby certify that copies of the foregoing Agreed Supplement to Consent Decree were served on this date by first-class mail, postage prepaid, upon the following individuals:

Nancy K. Peterson  
Quarles & Brady LLP  
411 East Wisconsin Avenue, Suite 2040  
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Washington, DC 20460

Dated: March 29, 2007

s/ Randall M. Stone